
(2013) 07 P&H CK 0848

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 4178 of 2011

Jaswant Singh

APPELLANT

Vs

Ranjit Singh

RESPONDENT

Date of Decision: July 29, 2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) & Order 6 Rule 17#Constitution of India, 1950 & Article 227

Citation: (2013) 07 P&H CK 0848

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: V.K. Sandhir, for the Appellant; Bikramjit Arora, for the Respondent

Final Decision: Allowed

Judgement

L.N. Mittal, J.

In this revision petition filed by defendant-Jaswant Singh under Article 227 of Constitution of India, challenge is to order

dated 16.04.2011 passed by learned trial Court thereby allowing application Annexure P-3 filed by plaintiff-respondent-Ranjit Singh for

amendment of plaint Annexure P-1. Plaintiff has filed suit inter alia seeking declaration that agreement to sell dated 19.12.2003 regarding sale of

house (belonging to the plaintiff) to the defendant, has become inoperative, ineffective and in executable.

2. By amendment of plaint, the plaintiff wants to plead that the alleged property, mentioned in the impugned agreement, is neither owned nor

possessed by the plaintiff and therefore he had no legal right to execute the impugned agreement. It is sought to be pleaded that the land in question

belongs to Gram Panchayat and it was in possession of father and uncle of the plaintiff in equal shares. The plaintiff is having five more brothers and

two sisters whereas plaintiff's uncle has left behind a daughter.

3. Defendant by filing reply Annexure P-4 opposed the amendment application moved by the plaintiff.

4. Learned trial Court vide impugned order dated 16.04.2011 has allowed the plaintiff's application for amendment of plaint. Feeling aggrieved,

defendant has filed this revision petition to assail the said order.

5. I have heard learned counsel for the parties and perused the case file.

6. Counsel for the petitioner contended that the petitioner had filed a separate suit for specific performance of the same agreement against the

respondent and in the said case, the respondent, who was defendant, sought amendment of his written statement to take similar plea as sought in

instant amendment application Annexure P-3 but the said amendment application filed by the respondent was disallowed in that suit and said order

has attained finality. It was also submitted that the said suit has since been decreed. This factual position has not been disputed by counsel for

respondent who however, pleaded that appeal has been filed in the said other suit.

7. Counsel for the petitioner contended that proposed amendment of plaint cannot be allowed as it was sought after commencement of trial. On

the other hand, counsel for respondent-plaintiff contended that proposed amendment of plaint has been rightly allowed by the trial Court being

necessary for deciding the real controversy between the parties.

8. I have carefully considered the matter. In view of mandatory provision of proviso to Order 6 Rule 17 of the CPC (in short, CPC), amendment

of pleadings cannot be allowed after commencement of trial unless the party seeking amendment could not have raised the matter before

commencement of the trial in spite of exercise of due diligence. In the instant case, it cannot be said that even in spite of due diligence, the

respondent-plaintiff could not have raised this plea (sought to be taken by amendment of plaint) before commencement of trial. Consequently,

proposed amendment cannot be allowed in view of proviso to Order 6 Rule 17 CPC because proposed amendment was sought after

commencement of trial.

9. In addition to the aforesaid, by proposed amendment, the plaintiff wants to take completely contradictory and inconsistent plea. In the headnote

of plaint Annexure P-1 itself, the plaintiff has stated that the agreement relates to house belonging to the plaintiff. It has also been stated in the plaint

by the plaintiff that this property fell to his share in mutual family settlement between his parents and uncle. However, by amendment of plaint, the

plaintiff without deleting the aforesaid plea in the original plaint, wants to plead that the plaintiff is neither owner nor in possession of the suit

property. The said inconsistent and contradictory plea cannot be allowed to be raised by amendment of plaint. Besides it, if as per proposed

amendment of plaint, the plaintiff is neither owner nor in possession of the suit property, then it is not explained as to why he is fighting this futile

litigation when he has nothing to lose. For the reasons aforesaid, proposed amendment of plaint cannot be allowed. Impugned order, allowing

proposed amendment of plaint, is thus illegal and suffers from jurisdictional error. Resultantly, the instant revision petition is allowed. Impugned

order passed by the trial Court is set aside. Application Annexure P-3 filed by plaintiff-respondent for amendment of plaint stands dismissed.

Nothing observed hereinbefore shall be construed as expression of opinion on merits of the suit.